

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES MCCONICO, JR.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:18-CV-772-WKW
)	
WAL-MART STORES INC., and)	
CEOs MIKE DUKE and BILL)	
SIMON,)	
)	
Defendants.)	

ORDER

On October 30, 2018, the Magistrate Judge filed a Recommendation (Doc. # 6) that Plaintiff's request to proceed in forma pauperis (Doc. # 2) and his motion for an order directing service of summons and complaint upon all Defendants (Doc. # 5) be denied. Plaintiff timely objected to the Recommendation. (Doc. # 7.) Upon an independent and *de novo* review of the record and Recommendation, Plaintiff's objections are due to be overruled, and the Magistrate Judge's Recommendation is due to be adopted.

The Magistrate Judge established that Plaintiff, while incarcerated or detained, has on at least three occasions had civil actions and/or appeals dismissed as frivolous, as malicious, for failure to state a claim and/or for asserting claims against Defendants immune from suit under 28 U.S.C. § 1915(g). (Doc. # 6, at 2).

The actions leading to a § 1915(g) violation are: (1) *McConico v. Treadway, et al.*, Civil Action No. 2:90-CV-1226-SCP (N.D. Ala. 1990) (complaint frivolous); (2) *McConico, et al. v. Thigpen, et al.*, Civil Action No. 2:90-CV-2069-ELN (N.D. Ala. 1991) (complaint frivolous); (3) *McConico v. White, et al.*, Civil Action No. 2:96-CV-1124-JHH (N.D. Ala. 1996) (complaint frivolous); (4) *McConico v. State of Alabama, et al.*, Civil Action No. 2:95-CV-950-JFG (N.D. Ala. 1995) (complaint frivolous); and (5) *McConico v. Mann, et al.*, Civil Action No. 2:96-CV-353-WHA (M.D. Ala. 1996) (complaint frivolous). These summary dismissals place Plaintiff in violation of 28 U.S.C. § 1915(g).

Plaintiff objects to the Recommendation on nonsensical grounds that fail to address his 28 U.S.C. § 1915(g) violation. (Doc. # 7.)

Accordingly, it is ORDERED as follows:

1. Plaintiff's objections (Doc. # 7) are OVERRULED.
2. The Magistrate Judge's Recommendation (Doc. # 6) is ADOPTED, and this action is DISMISSED without prejudice for Plaintiff's failure to pay the requisite filing and administrative fees upon his initiation of this case.
3. Plaintiff's request to proceed in forma pauperis (Doc. # 2) is DENIED.
4. Plaintiff's motion for an order directing service of summons and complaint upon all Defendants (Doc. # 5) is DENIED.

A final judgment will be entered separately.

DONE this 10th day of December, 2018.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE